IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

CRP.No. 606 of 2005()

CMA.48/2004 of DISTRICT COURT, THODUPUZHA
OS.52/2003 of SUB COURT,THODUPUZHA

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REVN. PETITIONER: RESPONDENT/DEFENDANT:

GODAVARI LEASING AND FINANCE LTD.,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER,
SRI.P.K. REMESH SHENOY, NO.214, PANAMPILLY NAGAR,
KOCHI-36.

BY ADV. SRI.RUSSEL JOY

RESPONDENTS: APPELLANT/PLAINTIFF:

M.M. BABY, S/O. MATHAI,
RESIDING AT MAPLAKKUDIYIL HOUSE, MACHIPLAVUKARA,
MANNAMKANDOM VILLAGE OF IDUKKI DISTRICT.

BY ADV. SRI.P.CHANDY JOSEPH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P.NO.606 OF 2005

Dated this the 5th day of December, 2007.

O R D E R

The respondent in this revision filed O.S.No.52/2003 before the Sub Court, Thodupuzha, against the revision petitioner for settlement of accounts, declaration and injunction. There was a hire purchase agreement between the parties as per which, the plaintiff got possession of a car on hire purchase basis. The plaintiff is a driver by profession. He plied the vehicle as a taxi car at Adimaly. The plaintiff alleged that a dispute arose between him and the defendant and the defendant demanded an exorbitant amount from the plaintiff. There was an attempt to take the vehicle out of the possession of the plaintiff. The suit was filed before the Sub Court, Thodupuzha in these circumstances.

2. The revision petitioner/defendant contended that the vehicle was purchased by the plaintiff from the Marikkar Motors, Ernakulam and the vehicle was was made over to the custody and possession of the defendant in terms of the hire purchase agreement. The agreement was executed at Calcutta. The defendant

contended that as per Clause 22 of the agreement, the court at Calcutta will have exclusive jurisdiction to entertain and try the suit for the reliefs prayed for by the plaintiff. It was contended that all the disputes, differences and claims arising out of the hire purchase agreement should be settled through courts at Calcutta and no other court shall have jurisdiction to try any such suit.

3. The trial court held on issue No.1 that it had no jurisdiction to try the suit and that the Calcutta court will have the exclusive jurisdiction. Accordingly, the plaint was directed to be returned to the plaintiff for presentation before the proper court. The order passed by the trial court on issue No.1 was challenged by the plaintiff in C.M.A.No.48/2004 on the file of the court of the District Judge, Thodupuzha. The court below held that the agreement was executed not at Calcutta and that no payments were made at Calcutta. It was found that the receipts for payment were issued by the defendant at Kochi Office. The court below noticed that the written statement was filed by the Branch Manager and the power of attorney holder of the defendant. The list of hire purchase instalment dues was found to be issued from the office of the dependant at Chennai. The defendant has agents at Thodupuzha

and Ernakulam. The stamp affixed on the hire purchase agreement was purchased from the stamp depot at Ernakulam. The court below concluded that the materials produced in the case would show that the agreement was not executed at Calcutta. The vehicle was also registered at Thodupuzha. The court below also noticed that the officers of the defendant at Thodupuzha and Ernakulam forcibly seized the vehicle from the possession of the plaintiff at Thodupuzha while the suit was pending. It was admitted by the defendant that the vehicle was seized from Thodupuzha. It was held by the court below that the agreement was executed at Thodupuzha and all payments were made at Thodupuzha and, therefore, the Calcutta court has no territorial jurisdiction. Clause 22 of the hire purchase agreement reads as follows:

> "This agreement has been executed by the owners at their office at CALCUTTA and it has been agreed between the parties hereto that all the CLAUSES, TERMS AND CONDITIONS of this Agreement shall be observed and performed at CALCUTTA and it is further agreed that the COURTS AT CALCUTTA ONLY AND NO OTHER COURTS WHATSOEVER shall have exclusive jurisdiction to try any Arbitration and or legal proceedings, in respect of any matter, claim or dispute arising out of, or under this agreement and,

or the Motor Vehicle hired out".

4. There is no case for the defendant that the plaintiff had gone to Calcutta and signed the hire purchase agreement. There is also no case for the defendant that monthly payments were made at Calcutta by the plaintiff. The defendant has no case that the vehicle was available at Callcutta or that it was being plied at Calcutta or it was re-possessed by them at Calcutta. No part of the cause of action, as rightly held by the court, has arisen within the jurisdiction of the Calcutta court.

In Economic Transport Organisiation v. United India Insurance Company (1986 KLT 220) it was held that:

> "17. When there is choice of forum, it is certainly open to the parties to agree on an exclusive forum for settlement of disputes. But such an agreement must be clearly spelled out either by express words or by necessary implication. Ouster of jurisdiction of courts cannot be lightly assumed or presumed. If there is such a concluded agreement, it will certainly operate as estoppal against the parties to the contract. If it is merely a unilateral affirmation or statement made by one of the parties, as long as it is not shown that the statement has been accepted by the other party as a term or condition of the agreement,

> it cannot be held the there is an agreement to confer exclusive jurisdiction on any court. Particular caution is necessary in regard to such a clause contained in a printed form, as in this case. Where the printed form is signed by both the parties or where a form printed by one party is signed by the other party and forwarded by the latter to the former and the printed form contains clear words conferring exclusive jurisdiction on a court at any particular place or ousting jurisdiction of the Court at any other place, it may not be difficult to hold the the parties have agreed on such a term. Even in such cases, courts must remember that people often sign order forms containing a good deal of printed matter without caring to read what is printed. It cannot always be said that everything which is printed may be deemed to form part of the contract. Where a form printed by one party is signed only by that party and delivered to the other party, without anything more it will be difficult for the court to hold that there has been consensus ad idem in regard to the particular clause. Of course, if there is some other material to indicate acceptance or consent of the party who received the printed form, then the court is free to inter that the clause formed part of the agreement."

5. I respectfully follow the decision in Economic Transport Organisation v. United India Insurance Company (1986 KLT 220).

Lastly, the learned counsel for the defendant/revision

petitioner contended that the court below was not justified in holding that the cause of action has arisen only within the jurisdiction of the Thodupuzha court. He submitted that part of cause of action has arisen within the jurisdiction of Ernakulam court. It is submitted that the branch office of the defendant company is at Ernakulam and that, it has no branch office at Thodupuzha. The counsel for the defendant further points out that finding of the court below that the Thodupuzha court alone has jurisdiction will cause much prejudice to the defendant. I make it clear that the findings rendered by the court below and the findings in this order are meant only for the purpose of deciding whether the Calcutta court has exclusive jurisdiction and whether any part of cause of action has arisen within the jurisdiction of the Thodupuzha court. The judgment of the court below and of this Court in this revision would not be treated as having held that Ernakulam court has no jurisdiction or that any part of cause of action has not arisen within the jurisdiction of the Ernakulam court. The learned counsel also submitted that the judgment of the appellate court or the judgment in revision should not preclude the revision petitioner/defendant from moving for transfer of the suit from Thodupuzha to Ernakulam court. It

is made clear that such right of the revision petitioner/defendant would not be affected either by the judgment of the appellate court or by the judgment in this revision.

K.T. SANKARAN, JUDGE.

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